

Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia) (2002 EPI 137)

[2002-137]



New South Wales

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New South Wales

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Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia) (2002 EPI 137)



New South Wales

Part 1 Introduction

1 Name of plan

This plan is *Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia)*.

2 Land covered by this plan

This plan applies to the land within the City of Penrith which is shown edged by a heavy black line on the map.

3 Relationship to other environmental planning instruments

- (1) This plan amends environmental planning instruments and deemed environmental planning instruments in the manner set out in Schedule 1.
- (2) Nothing in this plan affects the application of *Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)* to land to which this plan applies.
- (3) Nothing in this plan affects the application of *Penrith Local Environmental Plan No 255—Exempt and Complying Development* to land to which this plan applies.

4 Interpretation

- (1) Terms used in this plan which are defined in Schedule 2 have the meanings set out in that Schedule.
- (2) In this plan:
 - (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose, and
 - (b) a reference to a map is to a map kept in the office of the Council.
- (3) The list of contents of this plan and any explanatory notes in this plan are not part of this plan.

5 Consent authority

The Council is the consent authority for the purposes of this plan, subject to the Act.

6 Suspension of certain covenants etc

- (1) Any agreement, covenant or similar instrument which would otherwise prohibit or restrict development permitted by this plan does not apply to the extent necessary to permit that development.
- (2) Nothing in subclause (1) affects the rights or interests of any public authority under any registered instrument.
- (3) In accordance with section 28 of the Act, the Governor approved of subclauses (1) and (2) before this plan was made.

Part 2 Aims and objectives

7 Aims and objectives of this plan

- (1) For the purposes of achieving the objects of the Act, the aims and objectives of this plan are, in relation to:
 - (a) **development within the Villages:**
 - (i) to allow orderly and economic development within the Villages which is compatible with the rural and natural landscape and heritage of the area, and
 - (ii) to provide balanced opportunities for land uses in the Villages that:
 - (A) safeguard their vitality and viability, and
 - (B) promote their orderly and economic development, and
 - (C) promote their involvement in tourism, and their commercial and recreation potential, and
 - (iii) to provide for limited housing development opportunities that:
 - (A) cater for a demand for rural living, and
 - (B) provide housing opportunities for the local community, and
 - (C) provide for housing for an ageing population,where this is consistent with the other aims and objectives described in this clause, and
 - (iv) to enable rural residential development where it is consistent with the conservation of the rural and natural landscape, and

- (v) to outline matters for consideration in the determination of development applications, and
 - (b) **preservation of rural character, to maintain and enhance:**
 - (i) Penrith City's rural and urban harmony, and
 - (ii) the heritage and rural character of the Villages, and
 - (iii) the setting of Mulgoa and Wallacia within the rural landscape, and
 - (iv) the scenic quality and landscape features of the Mulgoa Valley, and
 - (c) **ecologically sustainable development:**
 - (i) to ensure protection of natural ecological elements within the Villages, especially within areas of ecological significance, and
 - (ii) to manage new development according to the principles of ecological sustainability, and
 - (iii) to conserve, protect and maintain riparian corridors, and
 - (iv) to ensure the protection of existing vegetation, fauna and water quality, and
 - (v) to encourage efficiency in water use and water conservation, and
 - (d) **economic development of land:**
 - (i) to protect and utilise the tourism potential of the Villages where it is consistent with the conservation of the rural and natural landscape, and
 - (ii) to minimise the cost to the community of fragmented and haphazard development of rural land by ensuring that development does not create unreasonable demands for the provision or extension of public amenities and services now or in the future, and
 - (e) **traffic safety**, to ensure that traffic-generating development is suitably located in the interests of amenity and to ensure that the safety and efficiency of roads are not adversely affected by development on adjacent land, and
 - (f) **flooding**, to control development in areas subject to flood hazard, and
 - (g) **Aboriginal archaeological and cultural heritage**, to identify and conserve items and sites of Aboriginal archaeological or cultural significance, and
 - (h) **bushfire**, to control development in areas subject to bushfire risk.
- (2) The objectives of each zone are set out in Part 3.

- (3) The objectives of each of the development controls for the Villages are set out in Part 4.

Part 3 Land use zones

8 Zones indicated on the map

The land to which this plan applies is divided into the following zones and land in each zone is identified on the map:

- Zone 1 (rc)—Rural Conservation (Residential)
- Zone 1 (vc)—Village Centre
- Zone 1 (vr)—Village Residential
- Zone 6 (a)—Public Recreation and Community Uses

9 Zone objectives and development control table

- (1) The development control table which follows indicates for each zone:
- (a) the objectives of the zone, and
 - (b) the land uses for the purpose of which:
 - (i) development may be carried out without development consent, and
 - (ii) development may be carried out only with development consent, and
 - (iii) development is prohibited.
- (2) Demolition of a building or work and subdivision of any land to which this plan applies may be carried out, but only with development consent.
- (3) Exempt development under *Penrith Local Environmental Plan No 255—Exempt and Complying Development* may be carried out without consent despite subclauses (1) and (2).
- (4) The consent authority must consider the zone objectives before granting a development application relating to land within a zone.
- (5) Except as otherwise provided by this plan, consent must not be granted to development on land to which this plan applies that, in the opinion of the consent authority, is contrary to:
- (a) one or more of the aims and objectives of this plan, or
 - (b) one or more of the objectives of the zone within which the development is proposed to be carried out.

Development control table

Zone 1 (rc)—Rural Conservation (Residential)

(a) Objectives of the zone

- (a) to allow for limited residential development while still protecting existing vegetation, fauna, heritage areas and items, and water quality, and
- (b) to conserve, protect and maintain riparian corridors, and
- (c) to cater for a demand for rural living, and
- (d) to allow for a gradual decrease in densities from the village to the surrounding rural area.

(b) (i) Without development consent

- bushfire hazard reduction
- home activities
- water storage tanks in conjunction with a dwelling for which consent has been granted

(b) (ii) Only with development consent

- advertisements associated with a land use for which consent or approval has been granted
- agriculture
- attached dual occupancies
- bed and breakfast establishments
- buildings or structures ordinarily associated with a dwelling house
- cafes or tearooms
- child care centres
- dams
- drains
- dwelling houses
- earthworks/filling
- farm sheds
- guesthouses
- health care consulting rooms
- home businesses
- roads
- telecommunications facilities
- telecommunications networks
- tourist establishments
- utility installations
- utility undertakings

(b) (iii) Prohibited

Any land use other than those included in items (b) (i) and (b) (ii).

Zone 1 (vc)—Village Centre

(a) Objectives of the zone

- (a) to provide for limited commercial and other non-residential opportunities appropriate to the village centre, and
- (b) to protect the rural character of the village, and
- (c) to provide the opportunity for tourism, and
- (d) to allow for sufficient commercial uses to meet local needs, and
- (e) to consolidate retail and commercial activities around existing commercial uses, and
- (f) to ensure that the nature and scale of new development is compatible with existing development.

(b) (i) Without development consent

- bushfire hazard reduction
- home activities

(b) (ii) Only with development consent

- advertisements associated with a land use for which consent or approval has been granted
- bed and breakfast establishments
- buildings or structures ordinarily associated with a dwelling house
- cafes or tearooms
- child care centres
- community facilities
- drains
- guesthouses
- health care consulting rooms
- home businesses
- hotels
- local retail or commercial premises
- places of assembly
- places of worship
- reception centres
- recreational facilities
- restaurants
- roads
- service stations
- shop top housing
- telecommunications facilities
- telecommunications networks
- tourist establishments
- utility installations
- utility undertakings

(b) (iii) Prohibited

Any land use other than those included in items (b) (i) and (b) (ii).

Zone 1 (vr)—Village Residential

(a) Objectives of the zone

- (a) to provide for the housing needs of Penrith's rural villages, and
- (b) to protect the rural character of those villages, and
- (c) to ensure that the nature and scale of new development is compatible with existing development.

(b) (i) Without development consent

- bushfire hazard reduction
- home activities

- water storage tanks in conjunction with a dwelling for which consent has been granted

(b) (ii) Only with development consent

- advertisements associated with a land use for which consent or approval has been granted
- bed and breakfast establishments
- buildings or structures ordinarily associated with a dwelling house
- cafes or tearooms
- child care centres
- community facilities
- drains
- dual occupancies
- dwelling houses
- educational establishments
- guesthouses
- health care consulting rooms
- home businesses
- places of assembly
- places of worship
- recreation areas
- recreational facilities
- roads
- telecommunications facilities
- telecommunications networks
- tourist establishments
- utility installations
- utility undertakings

(b) (iii) Prohibited

Any land use other than those included in items (b) (i) and (b) (ii).

Zone 6 (a)—Public Recreation and Community Uses

(a) Objectives of the zone

- (a) to provide for a range of open space, recreational, drainage and community uses, and
- (b) to ensure that development:
 - (i) is for a purpose that promotes or is related to the use and enjoyment of open space, and
 - (ii) does not significantly diminish public use of or access to open space, and

(iii) does not adversely affect the natural environment, any items or areas of heritage significance or the existing amenity of the area, and

(iv) does not adversely affect the public infrastructure located on the land.

(b) (i) Without development consent

- bushfire hazard reduction
- drains
- water storage tanks in conjunction with development for which consent has been granted
- works for the purposes of landscaping and gardening

(b) (ii) Only with development consent

- buildings for the purposes of landscaping and gardening
- child care centres
- community facilities
- dams
- flood mitigation works
- kiosks
- public buildings
- recreation areas
- recreational facilities
- restaurants
- roads
- telecommunications facilities
- telecommunications networks
- uses (including buildings) specifically permitted by an adopted plan of management for the land prepared pursuant to the [Local Government Act 1993](#) and which are under the care, control and management of the Council
- utility installations
- utility undertakings

(b) (iii) Prohibited

Any land use other than those included in items (b) (i) and (b) (ii).

Part 4 Development controls

10 General matters for consideration in determining development applications

- (1) Consent must not be granted to development unless the consent authority is satisfied that:
 - (a) the proposed development will not adversely affect the heritage and rural character of the site and its locality, and
 - (b) the proposed development will not significantly intrude into the skyline or detract from the scenic amenity of the vicinity, and
 - (c) views from the main road and vistas enjoyed from the public domain will not be adversely affected, and
 - (d) allotments are compatible in size and shape with the physical nature of the land, adjoining uses and the likely use of the land in the future, and
 - (e) the proposed development will not lead to excessive soil erosion or run off, and
 - (f) the proposed development leads to reinforcement and protection of local topography and setting, and
 - (g) the proposed development leads to reinforcement and enhancement of the streetscape and the character of the locality, and
 - (h) the proposed development will not have a negative impact on the amenity of the surrounding area due to the loss of parking in the vicinity or the generation of traffic, noise, dust, odour or other emissions, including lighting, and
 - (i) the proposed development is compatible with the scale and design of neighbouring development, and
 - (j) the proposed development makes adequate provision for the intended occupants and others in the immediate vicinity for privacy and access to sunlight, and
 - (k) the proposed development demonstrates energy efficiency, in terms of optimising the use of natural lighting, natural ventilation and natural heating and cooling of dwelling interiors, and
 - (l) adequate provision has been made for access, particularly with regard to transport and access for persons with a disability, and
 - (m) community services and facilities are adequate for the proposed development.

11 Dual occupancy

- (1) The objective of this clause is to protect residential amenity by prescribing minimum

lot areas and lot widths for dual occupancy development.

- (2) Despite any other provision of this plan, consent must not be granted to dual occupancy within a zone unless the lot on which the development will be located has a minimum area and width that is in accordance with the controls for the zone set out in the Table below:

Table

Zone			Standard lot		Internal lot	
			Minimum area	Minimum width	Minimum area	Minimum width
1 (rc)	(attached)	Area C	4,000m ²	30m	4,000m ²	30m
	(attached)	Area D	2ha	30m	2ha	30m
1 (vc)			<i>Not permissible</i>		<i>Not permissible</i>	
1 (vr)	(attached)		650m ²	15m	800m ²	20m
	(detached)		750m ²	15m	<i>Not permissible</i>	

Note—

Development proposals which meet the standards specified in the Table above are still subject to the provisions of clauses 11 (4) and 16 of this plan relating to provision of services.

- (3) Despite any other provision of this plan, detached dual occupancy is not permitted in the Rural Conservation (Residential) zone.
- (4) Despite any other provision of this plan, consent must not be granted to development for the purpose of dual occupancy (attached or detached) on a lot with an area of less than 2 hectares unless the development can be, is, or will be, as a result of the proposal, connected to a reticulated sewerage system.
- (5) The Areas referred to in the Table in this clause are shown on the map.

12 Subdivision

- (1) The objective of this clause is to prescribe minimum lot standards for land within the Rural Conservation (Residential), Village Centre or Village Residential zone that will:
- (a) protect residential amenity in the village areas, and
 - (b) protect existing vegetation, fauna, heritage conservation areas and heritage items, and water quality, and
 - (c) provide for development that promotes housing choice, and
 - (d) encourage lot dimensions and lot areas appropriate for development permissible in each zone, and

(e) maintain the prevailing settlement patterns in each of the residential and rural-residential zones.

(2) Despite any other provision of this plan, consent must not be granted to a subdivision of land within the Rural Conservation (Residential), Village Centre or Village Residential zone unless all lots created by the subdivision will meet the minimum standards for lot area, width and depth for the zone set out in the Table below:

Table

Zone	Standard lot			Internal lot		
	Minimum area	Minimum width	Minimum depth	Minimum area	Minimum width	Minimum depth
1 (rc) Area C	4,000m ²	30m	75m	4,000m ²	35m	75m
	1ha	30m	75m	1ha	35m	75m
1 (vc) Area A	550m ²	15m	30m	650m ²	18m	30m
1 (vr) Area A	550m ²	15m	30m	650m ²	18m	30m
	550m ²	15m	30m	650m ²	18m	30m

Note—

Lots must meet standards for area, width and depth. Meeting standards for width and depth is not sufficient.

(3) Despite the provisions of subclause (2), the consent authority may consent to development that involves subdivision of land in the Village Residential zone that creates lots with smaller areas or narrower widths than the minimum areas or widths specified in the Table, but only if the development proposed is a subdivision to provide separate lots for each of the dwellings comprising an existing or consented to dual occupancy.

(4) Despite any other provision of this plan, consent must not be granted to a subdivision of land within Area B in the Village Residential zone if, as a result of the development, the lot density will exceed 1 lot per 2,000 square metres of land area.

(5) For the purposes of this clause, the area of a lot does not include the area of any access corridor or right-of-carriageway.

(6) The Areas referred to in the Table in this clause are shown on the map.

13 Tourist establishments

(1) The objective of this clause is to protect residential amenity by prescribing matters to be taken into account when considering development for the purpose of a tourist establishment.

(2) Despite any other provision of this plan, consent must not be granted to development

for the purpose of a tourist establishment unless the consent authority is satisfied that:

- (a) parking arrangements are adequate, given the proposed use and surrounding development, and
- (b) the proposed development will not have a negative impact on residential amenity due to the generation of traffic or noise, or the number of customers visiting the site, and
- (c) the scale of the proposed development is in keeping with the surrounding area.

14 Preservation of vegetation

- (1) This clause applies to land on which there is rare or endangered flora and fauna species or their habitat, bushland with scenic value or where there is a naturally occurring watercourse.
- (2) The objectives of this clause are to:
 - (a) protect the remnants of plant communities which were once characteristic of land to which this plan applies, and
 - (b) protect rare and endangered flora and fauna species, and
 - (c) protect habitats for native flora and fauna, and
 - (d) protect naturally occurring watercourses, including their banks, and
 - (e) protect bushland and existing land forms for their scenic values, and
 - (f) retain the unique visual identity of the landscape.
- (3) Consent must not be granted to development unless the consent authority is satisfied that effective measures are incorporated into the development to mitigate any significant adverse impact that the development may have on the survival, movement and protection of native terrestrial and aquatic flora and fauna, and their habitat and breeding grounds.
- (4) Before granting consent to any development (including subdivision), the consent authority must consider how vegetation loss can be minimised, either as part of the initial development or, in the case of subdivision, as a likely part of future development.
- (5) Consent must not be granted to development unless the consent authority is satisfied that all vegetation to be retained on the site will be protected during the construction process by provision of temporary fencing or other barriers that are located so as to prevent direct or indirect damage to the vegetation, including:

- (a) damage to tree trunks, and
 - (b) destruction of understorey vegetation by machinery, and
 - (c) compaction of soil over critical zones for vegetation, and
 - (d) alteration to the rate, volume or quality of water supplies to the vegetation.
- (6) Where the consent authority considers it to be necessary or desirable, it may prepare or cause to be prepared a plan of management in respect of native vegetation and take the plan into consideration when determining a development application relating to land to which this clause applies.
- (7) Where development (including subdivision) proposed by a development application will impact on a natural watercourse, the consent authority may prepare or cause to be prepared a concept plan for protection of the watercourse and its banks (to a setback of 20 metres from the edge of the watercourse) and take the plan into consideration when determining the application.

Part 5 Miscellaneous

15 Tree preservation

- (1) A person must not ringbark, cut down, lop, top, remove, injure or otherwise wilfully destroy any tree, or cause any tree to be ringbarked, cut down, lopped, topped, removed, injured or wilfully destroyed by any action (including the addition of soil or drainage works around the base of the tree), except with development consent.
- (2) Despite subclause (1), consent is not required where:
- (a) the tree is dead, or
 - (b) the tree is declared a noxious weed under the *Noxious Weeds Act 1993*, or
 - (c) the tree is assessed as dying, in poor condition or potentially dangerous by a qualified arborist, or
 - (d) the action to the tree is taken for the purpose of bushfire hazard reduction, or
 - (e) the work is authorised by, and carried out in accordance with, a permit issued by the Council.

16 Provision of services

- (1) The objective of this clause is to ensure that all development has adequate water, sewerage and drainage services, and public amenities and services.
- (2) **Water** Despite any other provision of this plan, consent must not be granted to development of any kind that will require provision of a water supply unless the

consent authority is satisfied, by written evidence, that the development will be connected to a reticulated water supply.

- (3) **Sewerage** Despite any other provision of this plan, consent must not be granted to development of any kind that will require removal or disposal of sewage unless the consent authority is satisfied, by written evidence, that the development will have adequate facilities for the removal or disposal of sewage.
- (4) Despite any other provision of this plan, consent must not be granted to development for the purpose of aged persons housing unless the development will be connected to a reticulated sewerage system.
- (5) Despite any other provision of this plan, consent may be granted to development that involves on-site disposal of sewage only if:
 - (a) the site has an area of at least 1 hectare, unless the development is dual occupancy located on a site that complies with clause 11, and
 - (b) the consent authority is satisfied the disposal of sewage will comply with the requirements of the Department of Health and any development control plan, strategy or policy relating to on-site disposal of sewage adopted by the Council.
- (6) **Drainage** Consent must not be granted to development of any kind unless the consent authority has considered facilities proposed for the drainage of the land, having regard to the requirements of the Department of Health and to any strategy or plan relating to stormwater and waste water management adopted by the Council.
- (7) Consent must not be granted to development unless the consent authority is satisfied that:
 - (a) run-off from the site will be of an equal or higher quality than run-off from the site prior to the development occurring, and
 - (b) the quantity of run-off will not alter downstream natural hydrology.
- (8) **Public amenities and services** Consent must not be granted to development for any purpose unless, in the opinion of the consent authority or a relevant service authority, the development proposal demonstrates that the need for public amenities or public services has been or will be met.

17 Flood liable land

- (1) The objective of this clause is to control development on land which may be flood prone.
- (2) Consent must not be granted to the carrying out of any development on or adjacent to flood liable land unless the provisions of any Council policy for the development of flood liable land have been taken into consideration by the consent authority.

- (3) Consent must not be granted to the carrying out of any development (other than flood mitigation works or drains) on land which will be inundated as a result of a 1% AEP flood event which, in the consent authority's opinion, will significantly:
- (a) adversely affect potential flood behaviour, including the flood peak at any point upstream or downstream of the proposed development or the flow of floodwater on adjoining land, or
 - (b) increase the potential of flood hazard or flood damage to property, or
 - (c) cause erosion, siltation or destruction of riverbank vegetation in the locality, or
 - (d) affect the water table on any adjoining land, or
 - (e) affect riverbank stability, or
 - (f) affect the safety of the proposed development in time of flood, or
 - (g) restrict the capacity of a floodway, or
 - (h) increase the need for the Council, the State Emergency Service or any other Government agency to provide emergency equipment, personnel, welfare facilities or other resources associated with an evacuation resulting from flooding, or
 - (i) increase the risk to life and personal safety of emergency services and rescue personnel, or
 - (j) redistribute flows across the floodplain.
- (4) The erection of a building or the carrying out of a work for the purpose of an essential community service is prohibited on land below the PMF level.
- (5) Before granting consent for the development of land that is below the PMF level, the consent authority must have regard to a merit based assessment undertaken in accordance with the principles and guidelines set out in the NSW Government's *Floodplain Management Manual* (January 2001) or any document approved by the Director-General as replacing that document.
- (6) Consent must not be granted to the carrying out of any development (other than flood mitigation works or drains) on land which is below the PMF unless the consent authority has considered a flood damage assessment for the proposed development and is satisfied that the flood risk has been minimised.
- (7) In this clause, **PMF** means the probable maximum flood last recorded at the office of the Council for the purposes of this plan.

18 Traffic safety

- (1) The objective of this clause is to prevent development along Mulgoa Road or Park

Road resulting in a traffic hazard.

- (2) Development on a site that will require direct vehicular access from the site to Mulgoa Road or Park Road must not be carried out without development consent.
- (3) Subject to subclause (4), a person shall not carry out development on land which adjoins a classified road unless vehicular access to the land from that road is by way only of a road that is not a classified road.
- (4) Consent may be granted to development on a site that will require permanent vehicular access directly to a classified road only if, in the opinion of the consent authority, alternative vehicular access to that site:
 - (a) is not practicable, or
 - (b) cannot be provided by a road that is not a classified road, or
 - (c) will be provided by a proposed road that is identified in a development control plan applying to the land and that will not be a classified road.
- (5), (6) (Repealed)

19 Aboriginal cultural heritage

- (1) The objective of this clause is to identify and conserve items and sites of Aboriginal archaeological or cultural significance.
- (2) The consent authority may decline to grant consent for a subdivision of land it considers may have Aboriginal archaeological or cultural significance unless it has considered a study of the potential Aboriginal archaeological or cultural significance of the locality.
- (3) The consent authority may require the study to have been conducted in consultation with the local Aboriginal land council and the National Parks and Wildlife Service.

20 Bush fire prone land

- (1) This clause applies to bush fire prone land.
- (2) Consent must not be granted to development on land to which this clause applies that requires bushfire hazard reduction unless the development incorporates effective measures within the boundaries of the site and satisfactory to the consent authority to ensure the development is designed and sited, taking into account site conditions, to minimise:
 - (a) the potential for loss of life or property from bushfires, and
 - (b) any environmental impact from bushfire hazard reduction work.

- (3) Consent must not be granted to the subdivision of land to which this clause applies zoned Rural Conservation (Residential) if the consent authority is satisfied that the consequences of the subdivision would be inconsistent with the following:
 - (a) the *Penrith Bush Fire Risk Management Plan* available from the office of the Council,
 - (b) the advice of the NSW Rural Fire Service,
 - (c) the retention or future provision of fire trails and access roads to facilitate access for fire fighters.
- (4) Consent must not be granted to the construction of a dwelling house that the consent authority is satisfied will be sited on land to which this clause applies unless the development:
 - (a) can provide safe access for firefighting and emergency vehicles at all times, and
 - (b) conforms to the specifications and requirements of *Planning for Bush Fire Protection*, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006, and
 - (c) has adequate water supplies readily available from a reticulated supply and a supplementary static water supply of not less than 10,000 litres.
- (5) Before granting consent to any development on bush fire prone land, the consent authority must:
 - (a) be satisfied that the development will be in accordance with *Planning for Bush Fire Protection*, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006, and
 - (b) consider whether the measures proposed to avoid or mitigate the threat from bushfire, including the siting of the proposed development, the design and construction of any structures involved, the clearing of vegetation, and the provision of asset protection zones, landscaping and fire control aids (such as roads and water supplies), are adequate for the locality, and
 - (c) consider the potential environmental impacts of measures proposed to avoid or mitigate threat from bushfire.
- (6) In this clause:

bush fire prone land has the same meaning as in the Act.

21 Development near a noise source

- (1) Consent must not be granted to the carrying out of residential development within 100 metres of a major arterial road or in any other area that, in the opinion of the

consent authority, is significantly affected by road noise and vibration unless it has considered a noise and vibration assessment.

- (2) Consent must not be granted to development in an area that the consent authority considers is significantly affected by noise or vibration unless it is satisfied that appropriate measures to minimise this impact have been or will be taken.
- (3) Before granting consent to habitable buildings located adjacent to roads carrying heavy traffic or other land subject to a use that emits high levels of noise, the consent authority must take the following into consideration:
 - (a) places whose use is sensitive to noise (such as bedrooms) should be located away from the noise source,
 - (b) appropriate noise shielding or attenuation techniques to protect occupiers and other users of the building should be included as part of the building,
 - (c) the Environment Protection Authority's criteria provided in the *Environmental criteria for road traffic noise* (May 1999) published by that Authority.

22 Temporary use of land

Despite any other provision of this plan, a person may carry out development on land to which this plan applies with development consent for any purpose for a maximum period of 28 days, whether consecutive or non-consecutive, in any one year but only if, in the opinion of the consent authority, the use of the land for that purpose contributes to the cultural or economic wellbeing of the community without having a significant negative impact on the community or the environment.

23 Activities unaffected by this plan

Nothing in this plan restricts, prohibits or requires development consent for:

- (a) the use of existing buildings under the control of the Crown by the Crown, or
- (b) any activity listed in Schedule 3.

24 Development for additional purposes

Despite clause 9, a person may, with development consent, carry out development of land described in Schedule 4, subject to the conditions (if any) specified in that Schedule.

Schedule 1 Relationship to other environmental planning instruments

(Clause 3 (1))

1.1 Sydney Regional Environmental Plan No 13—Mulgoa Valley

Clause 2 Land to which plan applies

Omit clause 2 (2). Insert instead:

(2) This plan does not apply to land to which the following instruments apply:

Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia)

1.2 Penrith Planning Scheme Ordinance

Clause 5 Land to which scheme applies

Insert at the end of clause 5 (2):

Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia)

1.3 Interim Development Order No 93—Penrith

Clause 1A Excluded land

Insert at the end of the clause:

Land to which *Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia)* applies.

1.4 Penrith Local Environmental Plan No 201 (Rural Lands)

Clause 3 Land to which plan applies

Insert “or to land to which *Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia)* applies” after “matter” in clause 3 (2).

1.5 Penrith Local Environmental Plan No 255—Exempt and Complying Development

Clause 6 Definitions

Insert at the end of the definition of ***the map***:

, as amended by the maps deposited in the office of the Council and marked as follows:

*Penrith Local Environmental Plan No 255—Exempt and Complying Development
(Amendment No 1)*

Schedule 2 Definitions

(Clause 4 (1))

advertisement means the display of symbols, messages or other devices for promotional purposes or for conveying information, instructions, directions or the like, whether or not the display includes the erection of a structure or the carrying out of a work.

aged persons housing means housing that is primarily intended for use by aged or disabled persons and which is designed in accordance with [State Environmental Planning Policy No 5—Housing for Older People or People with a Disability](#).

agriculture means:

- (a) cultivating fruit, vegetable or flower crops, or
- (b) keeping or breeding livestock, bees or poultry or other birds, or
- (c) cultivating plants in a wholesale plant nursery,

for commercial purposes, but does not include use of an intensive livestock keeping establishment.

appointed day means the day on which this plan takes effect.

attached dual occupancy means two dwellings that share common walls either as part of a dwelling or garage, or that are connected by a common roof which forms a carport.

bed and breakfast establishment means a dwelling house used by its permanent residents to provide short-term paid accommodation (which may include meals) for visitors on a room basis and includes homestay accommodation, but which does not:

- (a) accommodate more than six visitors at any one time, or
- (b) involve the employment of persons other than those residents, or
- (c) interfere with the amenity of the neighbourhood due to the generation of vehicular traffic, the attraction of customers, or the reduction of car parking in the vicinity of the site, or
- (d) involve the sale of liquor or sale of goods from the site, or
- (e) involve the provision of a reception centre or a recreational facility.

building has the same meaning as in the Act.

buildings or structures ordinarily associated with a dwelling house means garages, carports, pergolas, swimming pools, and the like, and includes alterations and additions to an existing dwelling house.

bushfire hazard reduction means a reduction or modification (by controlled burning or mechanical, chemical or manual means) of material that constitutes a bushfire hazard.

cafe or tearoom means a building or place where food is prepared or offered for consumption, to be consumed in the building or at the place, the use of which is ancillary to the principal use of the land and with a maximum seating capacity for 50 people, but (in the development control table) does not include a building or place elsewhere specifically defined for the purposes of this plan or a building or place used or intended for a land use elsewhere specifically defined for those purposes.

child care centre means a building or place used for the purpose of supervising or providing care for children which:

- (a) caters for 6 or more children, whether or not those children are related to the owner or operator of the building or place, and
- (b) may include an educational function, and
- (c) may operate for the purpose of gain, and
- (d) may include a dwelling house which is attached to, part of, or associated with, the building or place,

but does not include a building or place providing residential care for those children.

classified road means a road or work declared under Part 5 of the [Roads Act 1993](#) to be a main road, a secondary road, a State highway, a tourist road, a State work, a freeway or a tollway or a controlled access road within the meaning of the [Roads Act 1993](#).

community facility means a building, place or facility, whether or not provided by the Council, provided for use by groups having similar physical, cultural, social, recreational, ethnic or other interests or beliefs, but (in the development control table) does not include a club which is registered under the [Registered Clubs Act 1976](#) or a building or place specifically defined elsewhere in this Schedule.

Council means the Council of the City of Penrith.

development has the same meaning as in the Act.

drain means any channel, conduit or pipe used for removing water other than sewage, and includes stormwater detention basins.

dual occupancy means development that results in two dwellings (whether attached or detached) on a single allotment of land (or which would have that result were it not for the fact that the allotment is to be subdivided as part of the development), however that development is described or provided for in an environmental planning instrument.

dwelling means a room or number of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.

dwelling house means a dwelling which is the only dwelling erected on an allotment of land.

educational establishment means a building or place used for education (including teaching) and includes:

- (a) a school, and

- (b) a tertiary institution, being a university, teachers' college, technical college, TAFE establishment or other tertiary college providing formal education which is constituted by or under an Act, and
- (c) an art gallery or museum, not used to sell the items displayed in it, whether or not accommodation for staff and students is provided and whether or not used for the purpose of gain.

essential community service means a service which, if adversely affected by flood or other natural disaster, would result in significant inconvenience to the community or increased risk to life or property, including police, hospital, fire fighting and telephone services.

flood liable land means land which would be inundated as a result of a flood having an annual exceedence probability of 1%.

flood mitigation works means works and measures which are intended to reduce or eliminate the effects of flooding.

guesthouse means a building or buildings used for paid accommodation for visitors, but only where:

- (a) the building or buildings are of a domestic scale of architecture, and
- (b) the building or buildings incorporate common facilities for the provision of meals, either to persons temporarily resident or to the public, whether or not those facilities are licensed, and
- (c) the use of the land does not interfere with the amenity of the neighbourhood due to the generation of vehicular traffic, the attraction of customers or the reduction of car parking in the vicinity of the premises that is available to those who do not frequent the premises.

health care consulting rooms means a dwelling house used by not more than 3 health care professionals for the purpose of providing health care services only to outpatients, who employ there not more than 3 employees in connection with such health care services.

health care professional means a person who provides traditional or complementary professional health care services to members of the public.

health care services means services ordinarily provided by a health care professional to members of the public, but does not include any procedures such as x-rays, ultrasounds, cat-scans, radiography or pathology tests or the like.

heritage and rural character includes the historic, architectural, Aboriginal, cultural, scientific, archaeological, aesthetic, ecological, natural or other environmental significance of buildings, works, relics and places.

home activity means a business carried out in a dwelling house or dwelling, or within the site area of a dwelling house or dwelling, by the permanent residents of the dwelling house or dwelling, and which does not involve:

- (a) the employment of persons other than those residents, or
- (b) customers or clients visiting the premises at any time, or
- (c) the display of goods, whether in a window or otherwise, or

- (d) the sale of goods by retail from the site, or
- (e) the exhibition of an advertisement (other than an advertisement exhibited on that dwelling house or dwelling to indicate the name or occupation of the resident), or
- (f) interference with the amenity of the neighbourhood by the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or the like, or
- (g) interference with the amenity of the neighbourhood due to the generation of vehicular traffic, the reduction of car parking in the vicinity of the premises that is available to those who do not occupy the premises, or the like, or
- (h) exposure to view, from any adjacent premises or from any public place, of any unsightly matter.

home business means a business carried out, or partly carried out, in a dwelling house or dwelling, or within the site area of a dwelling house or dwelling, by the permanent residents of the dwelling house or dwelling, and which does not involve:

- (a) the employment of more than two persons, at any one time, in addition to the permanent residents, or
- (b) the exhibition of an advertisement (other than an advertisement exhibited on that dwelling house or dwelling to indicate the name or occupation of the resident), or
- (c) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or the like, or
- (d) interference with the amenity of the neighbourhood due to the generation of vehicular traffic, the reduction of car parking in the vicinity of the premises that is available to those who do not occupy the premises, visits by customers or clients, or the like, or
- (e) exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or
- (f) the provision of any essential service main of a greater capacity than that available in the locality, or
- (g) operation of a brothel.

hotel means premises specified in a hotelier's licence granted under the [Liquor Act 1982](#).

intensive livestock keeping establishment means a building or place in which or on which cattle, sheep, goats, poultry or other livestock are held for the purpose of nurturing by a feeding method other than natural grazing and, without limiting the generality of the foregoing, includes:

- (a) feed lots, and
- (b) piggeries, and
- (c) poultry farms, and
- (d) fish farms (including farms for crustaceans),

but does not include a building or place used only for the keeping of livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the land.

internal lot means a lot the only means of access to which is an access corridor (a hatchet shaped lot) or a right-of-carriageway over another lot.

kiosk means a building or place having a gross floor area not exceeding 75 square metres which provides food and drink to people for consumption elsewhere, but (in the development control table) does not include a building or place elsewhere specifically defined in this Schedule.

local retail or commercial premises means retail or commercial buildings of a scale and nature appropriate to service the needs of people living or working on the land to which this plan applies, and may include, but is not limited to, uses or activities such as supermarkets, newsagencies, butchers', fruit and vegetable or hairdressers' shops, real estate agents' premises, chemists and banks, but which do not include a brothel.

major road includes Mulgoa Road and any other road within the land subject to this plan so defined by the Council in conjunction with the RTA.

place of assembly means a public hall, theatre, music hall, dance hall, music bowl or any other building of a like character used as such and whether used for the purposes of gain or not, but (in the development control table) does not include a place of worship, an institution or educational establishment.

place of worship means a building or place used predominantly for the purpose of religious worship, whether or not the building or place is also used for counselling, social events or religious training by a congregation or religious group.

PMF or **probable maximum flood** means the flood calculated to be the maximum which is likely to occur.

public building means a building or place used for a business or as an office by a public authority or an organisation established for public purposes.

reception centre means a building or place used for the holding of functions or occasions that involve the preparation and consumption of food in the building or at the place, including wedding receptions, celebratory functions, conferences or the like, but (in the development control table) does not include a building or place specifically defined elsewhere in this Schedule.

recreation area means an outdoor area which provides for social, recreational and leisure activities, and includes associated structures (playground equipment, boardwalks, cycleways and the like), but (in the development control table) does not include a building or place or land use specifically defined elsewhere in this Schedule.

recreational facility means a building or place used for indoor recreation (such as a table tennis centre, squash court, swimming pool, gymnasium, health studio or bowling alley), whether or not used for the purpose of gain, but (in the development control table) does not include a building or place specifically defined elsewhere in this Schedule.

restaurant means a building or place (such as a restaurant, cafe, tearoom or the like) the purpose of which is to provide food and drink to people for consumption only in that building or place, but (in the

development control table) does not include a building or place specifically defined elsewhere in this Schedule.

road means a public thoroughfare all or part of which is used for the passage of vehicles, pedestrians, bicycles or animals, and includes a classified road.

RTA means the Roads and Traffic Authority constituted under the [Transport Administration Act 1988](#).

service station means a building or place used for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products, whether or not the building or place is also used for one or more of the following:

- (a) the hiring of trailers,
- (b) the retail selling or the installing of spare parts and accessories for motor vehicles,
- (c) the washing and greasing of motor vehicles,
- (d) the repairing or servicing of motor vehicles,
- (e) the retail selling or hiring of small consumer goods,

but does not include a building or place used for body building or the panel beating or spray painting of vehicles.

shop top housing means a dwelling or dwellings above shops or commercial premises.

standard lot means a lot that is not an internal lot.

subdivision has the same meaning as in the Act.

telecommunications facility means:

- (a) any part of the infrastructure of a telecommunications network, and
- (b) any telecommunications line, equipment, apparatus, telecommunications tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network,

but does not include a low impact facility within the meaning of the [Telecommunications \(Low-impact Facilities\) Determination 1997](#) of the Commonwealth.

telecommunications network means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided or unguided (or both) electromagnetic energy.

the Act means the [Environmental Planning and Assessment Act 1979](#).

the map means the map marked “*Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia)*”.

the Villages means the land to which this plan applies.

tourist establishments means galleries, museums, local history centres and the like, whether or not

they are combined with cafes or similar activities and whether or not the articles on display are offered for sale.

tree means:

- (a) a living perennial plant which exceeds 5 metres in height, being the distance measured vertically between the horizontal plane of the base of the tree which is immediately above the ground and the horizontal plane of the uppermost point of the tree, or
- (b) individual trees, gardens or native vegetation listed in Section 2.8 (Significant Trees and Gardens) of Part 2 (City Wide General Controls) of *Penrith Development Control Plan 2006*, as adopted by the Council on 21 August 2006.

utility installation means a building or work used for a utility undertaking.

utility undertaking means any undertaking carried on by or by authority of any Government agency, or in pursuance of any Commonwealth or State Act, for the purposes of:

- (a) railway, road, water or air transport, or wharf or river undertakings, or
- (b) the provision of sewerage, sewage treatment or drainage services, or
- (c) the supply of water, hydraulic power, electricity or gas, or
- (d) telecommunications facilities, or
- (e) water quality control facilities.

Schedule 3 Development not requiring consent

(Clause 23 (b))

- (1)** The carrying out by persons carrying on public utility undertakings, being water, sewerage, drainage, electricity or gas undertakings, of any of the following development, being development required for the purpose of their undertakings, that is to say:
- (a) development of any description at or below the surface of the ground, or
 - (b) the installation of any plant inside a building or the installation or erection within the premises of a generating station or substation established before the appointed day of any plant or other structures or erections required in connection with the station or substation, or
 - (c) the installation or erection of any plant or other structures or erections by way of addition to or replacement or extension of plant or structures or erections already installed or erected, including the installation in an electrical transmission line of substations, feeder-pillars or transformer housings, but not including the erection of overhead lines for the supply of electricity or pipes above the surface of the ground for the supply of water, or the installation of substations, feeder-pillars or transformer housings of stone, concrete or brickwork, or
 - (d) the provision of overhead service lines in pursuance of any statutory power to provide a supply of electricity, or
 - (e) the erection of service reservoirs on land acquired or in the process of being acquired for the

purpose before the appointed day, provided reasonable notice of the proposed erection is given to the Council, or

(f) any other development except:

(i) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration, so as materially to affect their design or external appearance, of buildings, or

(ii) the formation or alteration of any means of access to a road.

(2) The carrying out by persons carrying on public utility undertakings, being road transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by road, including the construction, reconstruction, alteration, maintenance and repair of buildings, works and plant required for that purpose, except:

(a) the erection of buildings and the reconstruction or alteration of buildings so as to materially affect their design or external appearance, or

(b) the formation or alteration of any means of access to a road.

(3) The carrying out of any development required in connection with the construction, reconstruction, improvement, maintenance or repair of any road, except the widening, realignment or relocation of such a road.

(4) The carrying out by a rural lands protection board of any development required for the improvement and maintenance of travelling stock and water reserves, except:

(a) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect their design or purpose, or

(b) any development designed to change the use or purpose of any such reserve.

(5) The carrying out or causing to be carried out by a council engaged in flood mitigation works or by the Department of Land and Water Conservation of any work for the purposes of soil conservation, irrigation, afforestation, reafforestation, flood mitigation, water conservation or river improvement in pursuance of the provisions of the [Water Act 1912](#), the [Farm Water Supplies Act 1946](#), the [Rivers and Foreshores Improvement Act 1948](#) or the [Water Management Act 2000](#), except:

(a) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration of buildings so as to materially affect their design or external appearance, or

(b) the formation or alteration of any means of access to a road.

Schedule 4 Development for additional purposes

(Clause 24)